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Virginia Mason Medical Center and United Staff Nurses Union, Local 141, affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC. Case 19-CA-27401

April 18, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

Pursuant to a charge filed on February 12, 2001, the Acting General Counsel of the National Labor Relations Board issued a complaint on February 23, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 19-RC-14016. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On March 15, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On March 16, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its failure and refusal to bargain, but attacks the validity of the certification on the basis of the Board's disposition of two challenged ballots and the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

¹ The Respondent's requests to dismiss the complaint, for oral argument and for attorneys' fees, and related expenses are denied.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a State of Washington corporation, with an office and place of business in Winslow, Washington, where it is engaged in the business of providing patient and health care services.²

During the 12-month period preceding issuance of the complaint, the Respondent, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$250,000 and purchased and caused to be transferred and delivered to its facilities within the State of Washington, goods and materials valued in excess of \$5000 which originated outside said State.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held November 17, 2000, the Union was certified on December 6, 2000, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All registered nurses and all other professional employees employed by the Employer at its Winslow (Bainbridge Island) facility; but excluding all physicians, all nonprofessional employees, and guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About December 26, 2000, the Union, by letter, requested the Respondent to bargain, and, since about January 24, 2001, the Respondent has failed and refused to bargain. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after January 24, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an

² The Respondent states in its answer to the complaint, the record in the underlying representation case reflects, and we agree, that it is a health care institution within the meaning of Sec. 2(14) of the Act.

understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Virginia Mason Medical Center, Winslow, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Staff Nurses Union, Local 141, affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All registered nurses and all other professional employees employed by the Employer at its Winslow (Bainbridge Island) facility; but excluding all physicians, all nonprofessional employees, and guards and supervisors as defined by the Act.

(b) Within 14 days after service by the Region, post at its facility in Winslow, Washington, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not al-

tered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 24, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 18, 2001

John C. Truesdale,	Chairman
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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Staff Nurses Union, Local 141, affiliated with United Food and Commercial Workers International Union, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All registered nurses and all other professional employees employed by us at our Winslow (Bainbridge Island) facility; but excluding all physicians, all nonprofessional employees, and guards and supervisors as defined by the Act.

VIRGINIA MASON MEDICAL CENTER

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."